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And Counterclaimants
7 GS MAGIC, INC., GS MAGICSTOR, INC. and
RIOSPRING, INC.
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

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|---|---|--------------------------|
| 13 HITACHI GLOBAL STORAGE |) | CASE NO.: C-04-05460-JF |
| 14 TECHNOLOGIES NETHERLANDS, B.V., |) | |
| |) | ANSWER AND COUNTERCLAIMS |
| 15 Plaintiff, |) | |
| |) | DEMAND FOR JURY TRIAL |
| 16 v. |) | |
| |) | |
| 17 GS MAGIC, INC., GS MAGICSTOR, INC. and |) | |
| RIOSPRING, INC., |) | |
| |) | |
| 18 Defendants and |) | |
| 19 Counterclaimants. |) | |

20
21 **ANSWER**

22 Defendants GS Magic, Inc. ("GS Magic"), GS Magicstor, Inc. ("GS Magicstor") and
23 Riospring, Inc. ("Riospring") answer the Complaint of Hitachi Global Storage Technologies
24 Netherland, B.V. ("HGST") as follows:

25 1. Defendants lack knowledge or information sufficient to form a belief as to the
26 truth of the allegations contained of Paragraph 1 of the Complaint, and on that basis deny them.
27

1 2. In answer to Paragraph 2 of the Complaint, Defendants admit that GS Magic is a
2 People's Republic of China Corporation having offices at 30F Fuzhong International Plaza, 126
3 Xinhua Road, Guiyang, Guizhou, 550002 P.R.China. Defendants deny the remaining allegations
4 of Paragraph 2 of the Complaint.

5 3. In answer to Paragraph 3 of the Complaint, Defendants admit that GS Magicstor
6 is a People's Republic of China Corporation having offices at No. 1 Duxin Road, Dulaying,
7 Guiyang, Guizhou, 550017 P.R.China. Defendants deny the remaining allegations of Paragraph
8 3 of the Complaint.

9 4. Defendants admit the allegations of Paragraph 4 of the Complaint.

10 5. In answer to Paragraph 5 of the Complaint, Defendants admit that civil actions for
11 patent infringement arise under the patent laws of the United States, 35 U.S.C. § 271 *et seq*, but
12 deny that Defendants infringe HGST's patents.

13 6. Defendants admit the allegations contained in Paragraph 6.

14 7. In answer to Paragraph 7 of the Complaint, Defendants admit that RioSpring
15 resides in this judicial district, but deny the remaining allegations of Paragraph 7 of the
16 Complaint.

17 8. In answer to Paragraph 8 of the Complaint, Defendants admit that the face of the
18 '660 patent indicates the date it issued, its title, and its named inventor; but deny that it "duly and
19 properly issued"; Defendants lack knowledge or information sufficient to form a belief as to
20 whether HGST is the owner of the '660 patent, and on that basis, deny this allegation and
21 otherwise deny all allegations not expressly admitted.

22 9. In answer to Paragraph 9 of the Complaint, Defendants admit that the face of the
23 '474 patent indicates the date it issued, its title, and its named inventor; but deny that it "duly and
24 properly issued"; Defendants lack knowledge or information sufficient to form a belief as to
25 whether HGST is the owner of the '474 patent, and on that basis, deny this allegation and
26 otherwise deny all allegations not expressly admitted.

27 10. In answer to Paragraph 10 of the Complaint, Defendants admit that the face of the
28 '190 patent indicates the date it issued, its title, and its named inventors; but deny that it "duly

1 and properly issued”; Defendants lack knowledge or information sufficient to form a belief as to
 2 whether HGST is the owner of the ‘190 patent, and on that basis, deny this allegation and
 3 otherwise deny all allegations not expressly admitted.

4 11. In answer to Paragraph 11 of the Complaint, Defendants admit that the face of the
 5 ‘848 patent indicates the date it issued, its title, and its named inventors; but deny that it “duly
 6 and properly issued”; Defendants lack knowledge or information sufficient to form a belief as to
 7 whether HGST is the owner of the ‘848 patent, and on that basis, deny this allegation and
 8 otherwise deny all allegations not expressly admitted.

9 12. In answer to Paragraph 12 of the Complaint, Defendants admit that GS Magic
 10 develops and manufactures hard disk drives in P.R. China but otherwise deny the allegations.

11 13. In answer to Paragraph 13 of the Complaint, Defendants admit that GS Magicstor
 12 develops and manufactures hard disk drives in P.R. China but otherwise deny the allegations.

13 14. In answer to Paragraph 14 of the Complaint, Defendants admit that RioSpring
 14 develops hard disk drives, but otherwise deny the allegations.

15 15. Defendants deny the allegations of Paragraph 15 of the Complaint.

16 16. Defendants deny the allegations of Paragraph 16 of the Complaint.

17 17. Defendants deny the allegations of Paragraph 17 of the Complaint.

18 18. Defendants deny the allegations of Paragraph 18 of the Complaint.

19 19. Defendants deny the allegations of Paragraph 19 of the Complaint.

20 20. Defendants reallege and incorporate herein their responses to paragraphs 1-19 of
 21 the Complaint.

22 21. Defendants deny the allegations of Paragraph 21 of the Complaint.

23 22. Defendants deny the allegations of Paragraph 22 of the Complaint.

24 23. Defendants deny the allegations of Paragraph 23 of the Complaint.

25 24. Defendants deny the allegations of Paragraph 24 of the Complaint.

26 25. Defendants reallege and incorporate herein their responses to paragraphs 1-24 of
 27 the Complaint.

28 26. Defendants deny the allegations of Paragraph 26 of the Complaint.

27. Defendants deny the allegations of Paragraph 27 of the Complaint.

28. Defendants deny the allegations of Paragraph 28 of the Complaint.

29. Defendants deny the allegations of Paragraph 29 of the Complaint.

30. Defendants reallege and incorporate herein their responses to paragraphs 1-29 of the Complaint.

31. Defendants deny the allegations of Paragraph 31 of the Complaint.

32. Defendants deny the allegations of Paragraph 32 of the Complaint.

33. Defendants deny the allegations of Paragraph 33 of the Complaint.

34. Defendants deny the allegations of Paragraph 34 of the Complaint.

35. Defendants reallege and incorporate herein their responses to paragraphs 1-34 of the Complaint.

36. Defendants deny the allegations of Paragraph 36 of the Complaint.

37. Defendants deny the allegations of Paragraph 37 of the Complaint.

38. Defendants deny the allegations of Paragraph 38 of the Complaint.

39. Defendants deny the allegations of Paragraph 39 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. Defendants have not directly or indirectly infringed, contributed to the infringement of, or induced the infringement of any valid claim of the patents-in-suit.

SECOND AFFIRMATIVE DEFENSE

2. The patents-in-suit are invalid for failing to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 102 *et seq.*, including but not limited to 35 U.S.C. §§ 102, 103, and 112.

THIRD AFFIRMATIVE DEFENSE

3. Defendants are the beneficiaries of an express or implied license to the patents-in-suit.

FOURTH AFFIRMATIVE DEFENSE

4. HGST's assertion of the patents-in-suit is barred by the doctrines of laches and estoppel.

FIFTH AFFIRMATIVE DEFENSE

5. Defendants liability (if any) is reduced in whole or in part under the doctrine of patent exhaustion.

SIXTH AFFIRMATIVE DEFENSE

6. HGST's claims are barred by the doctrine of patent misuse.

SEVENTH AFFIRMATIVE DEFENSE

7. HGST is not entitled to equitable remedies due to its unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

8. Any damages claimed by HGST are limited pursuant to 35 U.S.C. §§ 286-287.

NINTH AFFIRMATIVE DEFENSE

9. This Court lacks personal jurisdiction over the Defendants.

TENTH AFFIRMATIVE DEFENSE

10. Service of process upon the Defendants was not sufficient.

TWELFTH AFFIRMATIVE DEFENSE

11. HGST has failed to join parties under Fed. R. Civ. P. 19.

COUNTERCLAIMS

Defendants allege for their counterclaims herein on personal knowledge as to their own activities and on information and belief as to the activities of others as follows:

The Parties

40. GS Magic is a P.R. China corporation and has a principal place of business at 30F Fuzhong International Plaza, 126 Xinhua Road, Guiyang, Guizhou, 550002 P.R.China.

41. GS Magicstor is a P.R. China corporation and has a principal place of business at No. 1 Duxin Road, Dulaying, Guiyang, Guizhou, 550017 P.R. China.

1 42. Riospring is a California corporation and has a principal place of business at 1490
2 McCandless Drive, Milpitas, California 95035 USA.

3 43. On information and belief, HGST is a corporation organized under the laws of
4 The Netherlands and has a place of business at Locatellikade 1, Parnassustoren 1076 AZ
5 Amsterdam, The Netherlands.

6
7 **Jurisdiction and Venue**

8 44. This Court has jurisdiction over the subject matter of this counterclaim pursuant
9 to 28 U.S.C. §§ 1338(a), 2201, and 2202.

10 45. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

11
12 **HGST's Disparagement of Defendants' Business**

13 46. On or about December 18, 2004, HGST (through its attorneys) wrote a letter to
14 GS Magicstor and the Consumer Electronics Association threatening to cause the exclusion of
15 Defendants' products from the CES trade show, which was scheduled for January 2005. In the
16 letter, HGST published the false and defamatory statement that CES policies mandated exclusion
17 of GS Magicstor's products from the CES trade show. In fact, as HGST knew or should have
18 known, there is no CES policy that allows products to be excluded based on unresolved claims of
19 patent infringement by competitors. Rather, CES officials will exclude products for IP reasons
20 only when: (1) an injunction has been entered by a court against selling the product; or (2) the
21 products to be exhibited are counterfeits that display the name or trademark of another company
22 without authorization.

23 47. HGST's letter falsely suggested that GS Magicstor's products were counterfeit
24 versions of other products, a claim completely unrelated to the actual patent dispute that
25 currently exists between the parties. HGST's letter even went so far as to compare GS
26 Magicstor's legitimate hard drive business to that of companies who sell pirated DVD players
27 displaying the Dolby audio logo without permission from Dolby.

Second Counterclaim

(Declaratory Judgment re: '474 Patent)

54. Defendants reallege and incorporate by reference the allegations of Paragraphs 1 through 53 above.

55. The '474 patent is invalid and/or not infringed for reasons including the existence of relevant prior art, the failure to comply with 35 U.S.C. §§ 102, 103 and 112, the operation of the doctrine of prosecution history estoppel, and because the accused products do not infringe on any valid and enforceable patent claims.

56. An actual controversy exists between the parties regarding whether any of the Defendants' activities infringe, directly or indirectly, any valid and enforceable claims of the '474 patent.

57. Defendants request a judicial determination of the respective rights of Defendants and HGST regarding HGST's claims that Defendants' manufacture, use, sale, or offers for sale of hard disk drives allegedly infringes, directly or indirectly, any valid and enforceable claims of the '474 patent. Defendants specifically request a declaration that they have not infringed, and do not infringe, any valid and enforceable claim of the '474 patent, and that any remaining asserted claims are invalid, unenforceable, and not infringed.

58. Accordingly, Defendants are entitled to a declaratory judgment that the '474 patent is invalid and is not infringed.

Third Counterclaim

(Declaratory Judgment re: '190 Patent)

59. Defendants reallege and incorporate by reference the allegations of Paragraphs 1 through 58 above.

60. The '190 patent is invalid and/or not infringed for reasons including the existence of relevant prior art, the failure to comply with 35 U.S.C. §§ 102, 103 and 112, the operation of the doctrine of prosecution history estoppel, and because the accused products do not infringe on any valid and enforceable patent claims.

1 61. An actual controversy exists between the parties regarding whether any of the
2 Defendants' activities infringe, directly or indirectly, any valid and enforceable claims of the
3 '190 patent.

4 62. Defendants request a judicial determination of the respective rights of Defendants
5 and HGST regarding HGST's claims that Defendants' manufacture, use, sale, or offers for sale
6 of hard disk drives allegedly infringes, directly or indirectly, any valid and enforceable claims of
7 the '190 patent. Defendants specifically request a declaration that they have not infringed, and
8 do not infringe, any valid and enforceable claim of the '190 patent, and that any remaining
9 asserted claims are invalid, unenforceable, and not infringed.

10 63. Accordingly, Defendants are entitled to a declaratory judgment that the '190
11 patent is invalid and is not infringed.

12 **Fourth Counterclaim**

13 **(Declaratory Judgment re: '848 Patent)**

14 64. Defendants reallege and incorporate by reference the allegations of Paragraphs 1
15 through 63 above.

16 65. The '848 patent is invalid and/or not infringed for reasons including the existence
17 of relevant prior art, the failure to comply with 35 U.S.C. §§ 102, 103 and 112, the operation of
18 the doctrine of prosecution history estoppel, and because the accused products do not infringe on
19 any valid and enforceable patent claims.

20 66. An actual controversy exists between the parties regarding whether any of the
21 Defendants' activities infringe, directly or indirectly, any valid and enforceable claims of the
22 '848 patent.

23 67. Defendants request a judicial determination of the respective rights of Defendants
24 and HGST regarding HGST's claims that Defendants' manufacture, use, sale, or offers for sale
25 of hard disk drives allegedly infringes, directly or indirectly, any valid and enforceable claims of
26 the '848 patent. Defendants specifically request a declaration that they have not infringed, and
27 do not infringe, any valid and enforceable claim of the '848 patent, and that any remaining
28 asserted claims are invalid, unenforceable, and not infringed.

1 68. Accordingly, Defendants are entitled to a declaratory judgment that the '848
2 patent is invalid and is not infringed.

3 **Fifth Counterclaim**

4 **(Defamation, Cal. Civ. Code § 44 et seq.)**

5 69. Defendants reallege and incorporate by reference the allegations of Paragraphs 1
6 through 68 above.

7 70. HGST's actions as set forth above constitute a false and unprivileged
8 disparagement of Defendants and their products, implying business dishonesty and/or unfair
9 business practices, causing damage to Defendants.

10 71. As a result of such actions, HGST is liable for defamation.

RELIEF SOUGHT

WHEREFORE, Defendants seek judgment on HGST's Complaint and Defendants' counterclaims as follows:

(a) That the Court enter judgment in favor of Defendants and against HGST on HGST's claims;

(b) That the Court find that the patents-in-suit are invalid, unenforceable, and/or not infringed and issue declaratory judgments against HGST and in favor of Defendants on these issues;

(c) That the Court find this to be an exceptional case within the meaning of 35 U.S.C. § 285;

(d) That Defendants be awarded their costs of suit and attorneys' fees as allowed by law;

(e) That Defendants be awarded compensatory and exemplary damages; and

(f) For such other and further relief as the Court may deem just and proper.

Dated: March 17, 2005

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Robert P. Feldman
Robert P. Feldman

Attorneys for Defendants and
Counterclaimants
GS MAGIC, INC., GS MAGICSTOR, INC. and
RIOSPRING, INC.

DEMAND FOR JURY TRIAL

GS Magic, Inc., GS Magicstor, Inc., and RioSpring, Inc. demand a trial by jury on all claims so triable.

Dated: March 17, 2005

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Robert P. Feldman
Robert P. Feldman

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Counterclaimants
GS MAGIC, INC., GS MAGICSTOR, INC. and
RIOSPRING, INC.